

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** October 14, 2016

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

**From:** Steve Hagle, P.E., Deputy Director  
Office of Air

**Docket No.:** 2016-0408-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 116, Control of Air Pollution by Permits for New Construction or  
Modification  
Repeal of Obsolete Notification and Comment Procedures  
Rule Project No. 2016-026-116-AI

**Background and reason(s) for the rulemaking:**

The rules in 30 Texas Administrative Code (TAC) Chapter 116, Subchapter B, Division 3 (Public Notification and Comment Procedures), are obsolete. These rules apply to air quality case-by-case new, amendment, and renewal permit applications that were declared administratively complete before September 1, 1999. House Bill (HB) 801 (Texas Legislature, 1999) and the rules in 30 TAC Chapters 39 and 55 implementing the bill superseded the public participation rules in Chapter 116 for all applications declared administratively complete on and after September 1, 1999. The HB 801 rules were approved as part of the State Implementation Plan (SIP) by the United States Environmental Protection Agency (EPA) effective February 5, 2014. Repealing the obsolete rules in Chapter 116 and requesting a SIP revision for EPA to remove them from the SIP will eliminate any possible confusion as to what public participation requirements are in the Texas SIP.

**Scope of the rulemaking:**

This adopted rulemaking repeals the obsolete rules in Chapter 116 to reduce confusion for the regulated community and the public. The SIP-approved public notice requirements in Chapter 39 will not be affected, and the public's opportunity to participate in the air permitting process will not change as a result of this repeal.

**A.) Summary of what the rulemaking will do:**

This rulemaking repeals §§116.130 - 116.134, 116.136, and 116.137 regarding Public Notification and Comment Procedures.

**B.) Scope required by federal regulations or state statutes:**

Repeal of the obsolete rules and the SIP revision removal of the rules from the SIP is consistent with the Federal Clean Air Act (FCAA) requirements that a state's SIP include a permitting program consistent with Title I and the EPA's regulations promulgated to implement Title I.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

None.

Re: Docket No. 2016-0408--RUL

**Statutory authority:**

Texas Water Code, §5.103, Rules; TWC, §5.105, General Policy; Texas Health and Safety Code (THSC), §382.002, Policy and Purpose; THSC, §382.003, Definitions; THSC, §382.011, General Powers and Duties; THSC, §382.012, State Air Control Plan; THSC, §382.017, Rules; THSC, §382.051, Permitting Authority of Commission; Rules; THSC, §382.0511, Permit Consolidation and Amendment; THSC, §382.0518, Preconstruction Permit; THSC, §382.055, Review and Renewal of Preconstruction Permit; THSC, §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing; THSC, §382.058, Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption; and 42 United States Code, §§7401, *et seq.*

**Effect on the:**

No fiscal impact is anticipated from this rulemaking, and it does not create a group of affected persons who were not affected previously.

**A.) Regulated community:**

Applicants for air permits will have greater clarity regarding the applicable public participation requirements.

**B.) Public:**

The public will have greater understanding of what the applicable public participation requirements are for air permitting applications.

**C.) Agency programs:**

There will be no workload increase for the Air Permits Division or other agency programs. Repeal of the rules could result in fewer questions from the public and regulated entities about the obsolete rules.

**Stakeholder meetings:**

There were no stakeholder meetings held related to this rulemaking; however, a rule public hearing was held during the comment period in Austin.

**Public comment:**

The public comment period ran from July 8, 2016, through August 8, 2016. A public hearing was held in Austin on August 2, 2016. The commission received no comments.

**Significant changes from proposal:**

There are no changes from proposal.

**Potential controversial concerns and legislative interest:**

In order for EPA to approve removal of these rules from the SIP, this rulemaking includes a demonstration that the revision to the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress. This is commonly known as the anti-backsliding provision (FCAA, §110(l)). This requirement will be met by noting that the Texas SIP currently includes the necessary public participation requirements for minor and major New Source Review permitting.

Re: Docket No. 2016-0408--RUL

On July 16, 1999, the commission proposed repeal of these rules and their removal from the SIP (24 TexReg 5427). The commission did not adopt the repeal, but retained the rules for applications that were administratively complete before September 1, 1999.

**Does this rulemaking affect any current policies or require development of new policies?**

No.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

Without this rulemaking obsolete rules would remain in the commission's rules, codified in Title 30 of the TAC; and in the Texas SIP, codified in 40 Code of Federal Regulations §52.2270. The impact of retaining the obsolete rules is limited to potential confusion in the regulated community and public regarding which public participation requirements apply to air permit applications.

**Key points in the adoption rulemaking schedule:**

*Texas Register* proposal publication date: July 8, 2016

Anticipated *Texas Register* adoption publication date: November 18, 2016

Anticipated effective date: November 24, 2016

Six-month *Texas Register* filing deadline: January 8, 2017

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**Attachments:**

None.

cc: Chief Clerk, 2 copies  
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